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In The
Supreme Court of the United States

October Term, 1970

No. 888

FLORIDA STATE BOARD OF DENTISTRY,

Petitioner,

vs.

ROY F. MACK,

Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In The
Supreme Court of the United States

October Term, 1970

No. 998

FLORIDA STATE BOARD OF DENTISTRY,

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vs.

ROY F. MACK,

Respondent.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

Florida State Board of Dentistry, Petitioner, pursuant to Rule 58 of the Rules of this Court petitions the Court to grant a rehearing upon its order denying certiorari entered March 8, 1971 and in support of its Petition urges substantial grounds and in support thereof shows:

Petitioner argued to this Court that the Fifth Circuit Court of Appeals did not have jurisdiction when it issued its order and opinion previously made in this case (Order dated July 7, 1970 - Petition for Rehearing denied August 17, 1970). It was further argued that the Fifth Circuit Court of Appeals had departed from the essential requirements of the law and from the accepted and usual course of judicial proceedings and sanctioned such a departure by the lower court and this court was called upon to exercise its supervisory power over said lower courts. Not previously presented to this court the below cited cases which were not available to the Petitioner at the time of the filing of its Petition for Certiorari are the following cases:

Younger v. *Harris*, ... U.S. ..... (1971) Feb. 23, 1971
Boyle v. *Landry*, ... U.S. ..... (1971) Feb. 23, 1971
Samuels v. *Mackell*, ... U.S. ..... (1971) Feb. 23, 1971
Dyson v. *Stein*, ... U.S. ..... (1971) Feb. 23, 1971
Perez v. *Ledesma*, ... U.S. ..... (1971) Feb. 23, 1971

The case of *Dyson* v. *Stein*, which was decided by this Court on February 23, 1971, involved a District Court considering permanent injunctive relief against the Dallas Police Department. The case of the *Florida State Board of Dentistry* v. *Mack* in the District Court asked for permanent injunctive relief against the Florida State Board of Dentistry directing said Board and its members from interferring in any way with Mack's practice of dentistry in the State of Florida (Complaint for Declaratory and Injunctive Relief filed in the District Court).

This Court's decision in *Dyson* v. *Stein*, supra, is therefor in direct conflict with the decisions of t court in failing to grant certiorari and to hear the Florida State Board of Dentistry's Petition for Certiorari. The cases are identical

the only exception being that in the Stein case the relief sought was to permanently enjoin the Dallas Police Department and would be considered criminal in nature and the District Court was asked to enjoin the Dental Board which is administrative or as argued throughout by Mack, quasi criminal.

The clear and unequivocal meaning of the recent announcements of this Court in the above cited cases make it clear that the District Court did not have jurisdiction in the first instance. It is therefore equally clear and decided by this Court and other lower federal courts that the Fifth Circuit Court of Appeals had no jurisdiction and certainly had no jurisdiction whatsoever on its own motion to review a matter not presented to it in any way by the parties or sanctioned by this court.

It is therefore respectfully submitted that this Court has ignored its own decisions in the above cited cases and particularly *Dyson v. Stein*, which action was brought pursuant to 42 U.S.C. §§ 1983 (which is the identical section Mack used in the District Court). The relief sought is identical and one case involved a criminal proceeding and the other a quasi criminal proceeding according to Mack, or a violation of administrative law requiring disciplinary proceedings.

It should be noted here as pointed out in our Petition for Certiorari that Mack had already exhausted his legal remedies in the State of Florida and did not choose to have this Court review his disciplinary proceeding.

This Court's opinion in *Younger v. Harris* says:

> "Since the beginning of this Country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from inter-

ference by federal courts. In 1793 an Act unconditionally provided: '. . . nor shall a writ of injunction be granted to stay proceedings in any court of any state . . .' 1 Stat. 335, c.22. A comparison of the 1793 Act with 28 U.S.C. § 2283, its present-day successor, graphically illustrates how few and minor have been the exceptions granted from the flat, prohibitory language of the old Act. During all this lapse of years from 1793 to 1970 the statutory exceptions to the 1793 congressional enactment have been only three: (1) '. . . except as expressly authorized by Act of Congress . . .'; (2) '. . . where necessary in aid of its jurisdiction . . .'; and (3) '. . . to protect or effectuate its judgments . . .' In addition, a judicial exception to the long-standing policy evidenced by the statute has been made where a person to be prosecuted in a state court can show that he will, if the proceeding in the state court is not enjoined, suffer irreparable damages. See Ex parte Young, 209 U.S. 123 (1908)."

The Board's request for certiorari appears even clearer and more distinct than the cited case as there can be no question concerning whether irreparable damage will be done as Mack proceeded with state court review and then did not consider his case either important enough or meritorious enough to ask for review by this court.

A matter not presented to this court in the original petition of substantial grounds available to the Petitioner is the question of whether this court is going to continue its long standing decision against federal courts interferring with state court matters or whether it is going to allow every district court (fed) or every circuit court (fed) to review the transcript of any and all state court decisions.

It is sincerely and urgently urged that this court consider this important and timely issue having serious state federal implications. This court in *Younger v. Harris* has already said:

> "The precise reasons for this long-standing public policy against federal court interference with state court proceedings have never been specifically identified but the primary sources of the policy are plain. One is the basic doctrine of equity jurisprudence that courts of equity should not act, and particularly should not act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. The doctrine may originally have grown out of circumstances peculiar to the English judicial system and not applicable in this country, but its fundamental purpose of restraining equity jurisdiction within narrow limits is equally important under our Constitution, in order to prevent erosion of the role of the jury and *avoid a duplication of legal proceedings and legal sanctions where a single suit would be adequate to protect the rights asserted.* This underlying reason for restraining courts of equity from interfering with criminal prosecutions is reinforced by an even more vital consideration, the notion of "comity," that is a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best *if the State and their institutions are left free to perform their separate functions in their separate ways.* This, perhaps, for lack of a better and clearer way to describe it, is referred to by many as "Our Federalism," and one familiar with the profound debates that ushered our Federal

Constitution into existence is bound to respect those who remain loyal to the ideals and dreams of "Our Federalism." The concept does not mean blind deference to "States' Rights" any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. *What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.* It should never be forgotten that this slogan, "Our Federalism," born in the early struggling days of our Union of States, occupies a highly important place in our Nation's history and its future." (Emphasis supplied)

In view of the cases cited herein, the Board is left in a state of confusion as to why its decision which was reviewed and approved by the highest state court can be reviewed by a lower federal court when this court holds that such action can not be taken.

CONCLUSION

For the foregoing reasons it is respectfully urged that this Petition for Rehearing be granted and that upon further consideration, writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit.

It is respectfully submitted that this important and timely issue having serious state and federal implications be heard and decided by this court in this case.

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Richard L. Randle
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I, RICHARD L. RANDLE, counsel for the above-named Petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

Richard L. Randle
316 First Bank & Trust Building
Jacksonville, Florida 32202

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies hereof have been furnished to ALAN R. SCHWARTZ, Esquire, Schwartz & Horton, 410 Concord Building, Miami, Florida 33130, by mail, this 31st day of March, 1971.

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ATTORNEY